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PASS TO USTR FOR BENNETT HARMAN

E.O. 12958: DECL: 03/21/2016
TAGS: [EPET](#) [EINV](#) [ETRD](#) [ECON](#) [EC](#)
SUBJECT: CHEVRON CLOSE TO FILING BIT NOTICE

Classified By: Charge d'Affaires Jefferson Brown, reason 1.4 (b),(d)

¶1. (C) Summary. The Ambassador met March 17 with Chevron local representative Jaime Varela for an update of Chevron's legal cases. Varela gave the status of the case in the Lago Agrio court, the AAA arbitration, and the U.S. Federal Court case and said Chevron would soon file a notice requesting international arbitration under the Bilateral Investment Treaty. Bottom line: the Chevron case is slowly moving forward in several venues, with no resolution expected before 2007 at the soonest. End Summary.

Lago Agrio Case - A Long Way to Go

¶2. (SBU) Chevron's Ecuador representative Jaime Varela explained to the Ambassador on March 17 that the case for environmental damages filed against Chevron (when Texaco operated in Ecuador) that began in Ecuador in May 2003 (after ten years in U.S. courts) continues to plod along. The court has now investigated 40 of the 122 oil sites the parties agreed to investigate as part of the suit. At that rate, the Ambassador noted that it would take six years for the Court to conclude the investigative phase of the trial. Varela agreed the investigations would take a long time to conclude. He noted that the plaintiffs were talking about limiting the number of investigations, which he said Chevron was not inclined to do. Varela said that Chevron had not had any real complaints about the judge in the Lago Agrio case, but had some concerns about a new judge assigned to the case.

New U.S. Federal Court Trial Next Year

¶3. (U) When Chevron sought arbitration with the American Arbitration Association (AAA) on the basis of its operating contract with the GOE, the GOE objected in New York State Court. Chevron wants the AAA panel to rule that under the terms of its contracts with the GOE, including its remediation agreement, that GOE must indemnify Chevron and pay all legal expenses and any adverse judgment against Chevron. Chevron had the case removed to the U.S. Federal Court in New York and a trial date has been set for March 7, ¶2007. The U.S. Federal Court stayed the arbitration until it ruled on the matter.

¶4. (SBU) According to Varela, the Federal case will resolve the entire case against Chevron. If the Federal Court rules in Chevron's favor, then the GOE would be responsible for the

defense of the Lago Agrio case and any judgment in favor of the plaintiffs. (Note: Varela did not mention why he thought the Federal Court's decision would mean that the AAA panel would also rule in Chevron's favor. End note.)

BIT Filing Imminent

15. (C) Varela said Chevron was about to file a notice of international arbitration under the U.S.-Ecuadorian Bilateral Investment Treaty (BIT). That claim is based on fuel for domestic consumption that Texaco was required by its contract to provide to the GOE at subsidized prices. Supposedly any fuel that Texaco provided in excess of internal consumption was to be credited to Texaco. Instead, the GOE sold the surplus fuel in the international market and kept the proceeds. According to Varela, some of these cases have been pending in Ecuadorian courts for 16 years and the sum allegedly now owed to Chevron is around \$800 million.

16. (C) The filing of the BIT claim would start a six month clock for resolution of the dispute, according to Varela. At the expiration of that period, the parties would each select their arbitrators, who would then select a third arbitrator. Chevron will not make public their BIT notification, according to Varela, because they believe the Plaintiffs in the Lago Agrio case would use it against them to argue that Chevron is trying to pressure the court in Lago Agrio.

No Resolution This Year

17. (C) Varela concluded that there would not be much progress in 2006 on their case. The investigations of the oil fields would continue. The AAA arbitration has been stayed until after the March 2007 Federal Court trial. Varela said that the Federal Court ruling would be dispositive.

Plaintiffs' Attorneys Claim Chevron Principally Liable

18. (U) Econoffs met with the Lago Agrio Plaintiffs' American lawyers a couple of weeks ago. They claimed that despite the remediation agreement and release given to Chevron, as the principal operator of the fields, Texaco (now Chevron) is legally responsible for the environmental damages. They argued that Texaco was the first oil company to come into Ecuador, and basically taught PetroEcuador the oil business. Since Texaco, as the operator, had caused the damage, it was responsible for it, even if PetroEcuador and the Ecuadorian government benefited financially. They did not directly answer the question as to why state-owned PetroEcuador was not named as a party. However, one of the attorneys noted the GOE's difficulties in paying state-owned PetroEcuador's private contractors and the recent judgment for Occidental Petroleum (Oxy) and against the GOE for well over \$100 million.

19. (U) The plaintiffs' lawyers stated that Chevron did not fully disclose the history of the case to the New York Federal Court, especially with respect to Chevron's acceptance of the Ecuadorian court's jurisdiction as a condition for dismissal of the prior U.S. court case for "forum non conveniens" (better jurisdiction elsewhere). The Plaintiff's lawyers also claimed that many of the test results of the oil patches in Ecuador supported their case.

Comment

110. (C) We agree with Chevron's local representative on several fronts. It is unlikely that the case against Chevron will be resolved this year. We also agree that the case in New York Federal Court should clarify matters for both sides. In addition, up until now, both sides in the Lago Agrio case have had no real complaints about the administration of the case, though, they agree the investigations have a long way

to go and both have expressed concern that the judicial process could be affected by outside pressures at some time in the future.

¶11. (C) We were surprised that Varela, in contrast to other Chevron reps we have met in the past, requested no USG intervention in the case. In previous meetings, Chevron reps have suggested that the USG pressure the GOE to assume responsibility for the environmental damage in the areas once operated by Chevron. Given the complex legal questions and the questions of fact disputed in the case, it does not seem likely that any available inducements would convince the GOE to assume what may amount to billions of dollars of environmental liability.

¶12. (C) Chevron has at least three fora in which to resolve its disputes with the private plaintiffs and the GOE. While we will continue to raise the matter with the GOE when we discuss other commercial disputes, our assessment is that these matters are being fairly and adequately addressed in the courts or in arbitration and require no direct USG action at this time.

BROWN